IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 122 OF 2007

M/S. DELCON ENGINEERING THROUGH ITS PARTNER MR. T. D. AHMED ....Petitioner

Versus

STATE OF GOA THROUGH CHIEF SECRETARY AND ANR ....Respondents

Mr. Vivek Rodrigues, Advocate for the petitioner.

Mr. S. R. Rivonkar, Government Advocate for the respondent.

Coram:- S.K. SHAH, J.

Date:- 2nd March, 2007

P.C.

Heard the learned Counsel on both sides. By this writ petition, the order passed by the District Judge, Panaji on 13.2.2007 is challenged, whereby the learned District Judge rejected the application filed by the petitioner under Section 24 of C.P.C. for transfer of the proceeding pending before the ad-hoc Addl. District Judge-3, F.T.C. Mapusa to any other Court.

2. The proceeding before the ad hoc Addl. District Judge was the Civil Suit No.11/04. It was adjourned from time to time. It appears that a number of adjournments were given. The recording of evidence was completed and the present position is that it is fixed for arguments. What was alleged in the transfer application was that the petitioner has no confidence that he would get justice at the hands of the learned Judge. For making this allegation, the Counsel for the petitioner has pointed out two instances. They are as follows :

That on 8.11.06, the Advocate for the plaintiff had filed an application for perusal and verification by the learned Judge the

documents, namely certified copies of the Certificate of Registration of Firm and the Deed of Partnership and for returning the same to him. The submission which is made on behalf of the petitioner is that the documents produced were not taken on record. Subsequently, the same documents were produced along with the application dated 5.1.07 when the documents were allowed to be produced and taken on record. The submission made on behalf of the petitioner is that the documents were returned on 8.11.06 although the learned Judge had made certain endorsement which came to be subsequently struck off and the documents were returned. I do not find any merit in this submission as reading of the application dated 8.11.2006 itself indicates that those documents were produced subject to production of the originals and they were only for perusal by the learned Judge and the prayer that was made in the application was that after perusal and verification, the same to be returned to the plaintiff. If this prayer was made, there is no substance in the allegation that the documents were returned. What is pertinent to be noted is that when on the next date the said documents were sought to be produced, the application was allowed on 5.1.07 itself. Grievance is made that in the Roznama dated 8.11.06 these facts were not mentioned. This allegation is also meritless as when the prayer was for return of the documents and they were returned, it was not necessary to mention the said documents.

The second instance pointed out is that earlier to 28.9.06 certain documents were tried to be shown in the cross examination, but they were disallowed and, therefore, by application dated 28.9.06 that fact was brought on record. On this application also, the learned Judge has passed order which reads as under :

> "It is true that such a submission was made but it was found that the submission was not relevant for reason stated in the order. Hence it was not recorded."

Thus, the learned Judge has found the submission made by the learned Advocate on behalf of the petitioner on the earlier occasion that

the documents which were tried to be shown to the witness, was not relevant. It is duty of the Judge to look to the relevancy of a particular document and if satisfied that the documents are relevant, then alone it is allowed either to produce or to be shown to the witness in the cross examination. Thus, it was in discharge of his duty as a Judge, held that the documents were not relevant and therefore, they were not allowed. There is nothing wrong so as to give rise to any prejudice in the mind of the petitioner.

3. It is true that the justice should not only be done, but should be seen to have been done. This is the cardinal principle. However, that does not mean that a party can inculcate prejudice without there being any basis. The aforesaid two instances cannot be said to be reasonable for giving rise to cause prejudice in the mind of the petitioner that he would not get justice in the hands of the trial Judge.

4. Under the circumstances, the learned District Judge has rightly rejected the application for transfer. I do not find any merit in the writ petition. The writ petition is, therefore, dismissed.

S.K. SHAH, J.

ssm.